

Filed 3/18/99 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

1999 ND 41

State of North Dakota,

Plaintiff and Appellee

v.

Brian Kelly Martineau,

Defendant and Appellant

Nos. 980363 & 980364

Appeal from the District Court of Grand Forks County, Northeast Central
Judicial District, the Honorable Bruce E. Bohlman, Judge.

AFFIRMED.

Per Curiam.

J.E. Rick Brown, Assistant State's Attorney, 125 South 4th Street, P.O. Box
5607, Grand Forks, ND 58206-5607, for plaintiff and appellee. Submitted on briefs.

Brian Kelly Martineau, pro se. Submitted on briefs.

State v. Martineau
Nos. 980363 & 980364

Per Curiam.

[¶1] Brian Kelly Martineau appealed from a district court order denying his motion to correct an illegal sentence, under Rule 35(a), N.D.R.Crim.P. Martineau argues this Court should overrule its prior decisions regarding resentencing, following the revocation of probation, because they violate the federal and state constitution and are contrary to legislative history. We summarily affirm under N.D.R.App.P. 35.1(a)(7). State v. Lindgren, 483 N.W.2d 777, 779 (N.D. 1992) (stating section 12.1-32-07(5) [now section 12.1-32-07(6)], N.D.C.C., authorizes trial courts to resentence a defendant who violates a condition of probation to any sentence that was originally available); see also City of Bismarck v. Uhden, 513 N.W.2d 373, 376 (N.D. 1994) (recognizing that “[w]here courts of this State have construed statute and such construction is supported by the long acquiescence on the part of the legislative assembly and by the failure of the assembly to amend the law, it will be presumed that such interpretation of the statute is in accordance with legislative intent”).

[¶2] Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Mary Muehlen Maring
William A. Neumann
Dale V. Sandstrom